IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

ARBITRATION PETITION NO.145 OF 2007

Vijay Galani Proprietor — Petitioner
vs.
M/s.Noble Films Distributors — Respondents

Mr.R.U. Singh for the petitioner.

Mrs.Mamta Shah for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 22nd June, 2007

P.C.

The petitioner has challenged the award dated 7th November, 2006 whereby the Arbitral Tribunal based on the mutual agreement which was culminated into the letter of arrangement dated 13.11.2004, passed the following award:

> 1. That the letter of arrangement/agreement dated 26.10.2002 and the subsequent letter of mutual settlement dt. 13.11.2004 entered into between the complainant and the respondent is valid subsisting and binding on the parties.
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> 2. That the respondent Producers, M/s.Film Folks, Mumbai, are liable to refund to the complainant distributors M/s.Noble Film Distributors, Mumbai, in terms of the said agreement the balance unrecouped advance of Rs.50,00,000/- along with interest @ 12% calculated from 31.3.2006 till the date of final payment.
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> 3. That the Respondent Producers M/s.Film Folks, Mumbai, shall pay the Complainant distributors M/s.Noble Film Distributors, Mumbai, the sum of Rs.50,00,000/- as balance of refundable advance along with interest @ 12% per annum calculated from 31.3.2006 till the date of final payment and complaint

registration fee of Rs.500/- within 15 days from the date of intimation.

2. Respondent no.1 is a firm carrying on the business of film distribution within the territory of Bombay. The petitioner is carrying on the business in film production as a sole proprietor in the firm name and style of "Film Folks". The petitioner had agreed to assign the distribution rights in respect of the Hindi feature film titled "Film Folks Production No.4", i.e. BARDAASHT, on the terms and conditions dated 10.1.2001 on the M.G. basis. It was agreed that all the disputes and differences arising between the parties and as per the practice prevailing in the film trade as respondent no.1 being distributor was registered member with the Distributors Association-respondent no.5 agreed to settle the same through the Committee/Arbitral Tribunal.

3. The parties arrived at a new arrangement in writing again on 26.10.2002 for the said film for distribution and exhibition as set out in letter dated 26.10.2002.

4. There arose dispute between the parties. Therefore a complaint was lodged by respondent no.1 before respondent no.5. After registration of the said complaint with respondent no.5, the petitioner and respondent no.1 had arrived at an amicable settlement in writing dated 13.11.2004 wherein the petitioner had

agreed to make the payment of Rs.67,50,000/- by instalment.

5. Pursuant to the said arrangement dated 13.11.2004 the petitioner had deposited a sum of Rs.17,50,000/- with respondent no.1. The petitioner though agreed not made the payment of further two instalments of Rs.25,00,000/- each.

6. The respondent therefore requested the Adjudication Sub-Committee of the Indian Motion Pictures Distributor's Association, Mumbai (the IMPDA,Mumbai) to pass order as the petitioner has failed and neglected to remit the balance claim of Rs.50,00,000/- with 12% interest, inspite of several requests. The parties have agreed in the letter of arrangement that respondent no.1 would be at liberty to pursue their complaint with the IMPDA, Mumbai for recovery of their dues from the petitioner as averred by the respondent in the reply affidavit to the present petition and the same also remained uncontroverted. The petitioner has admittedly received notices from respondent no.5 as referred in paragraphs 14 to 17 of the petition. Those paragraphs are as under:

"14. To the great shock and surprise of the petitioner the respondent No.5 sent a letter dated 08.09.2006 to

the petitioner and intimated abut the balance claim of Rs.50,00,000/- payable to Respondent no.1 and in default of the payment the said matter will be placed before the adjudication sub-committee at its next meeting for its consideration. The petitioner states that the said letter dated 08.08.2006 is sent a malicious and a vexatious letter and contrary to the arrangement arrived at between the petitioner and the Respondent No.1 being arrangement dated 13.11.2004. The petitioner states that the Respondent No.5 sent another letter dated 08.09.2006 for the payment of the balance dues of Rs.50,00,000/- along with interest thereon. The petitioner states that the Respondent No.5 refer the matter to the adjudication sub committee at its next meeting to be held on 14.09.2006 at 3.00 p.m. Hereto annexed and marked as Exhibit-J is the copy of letter dated 08.09.2006 addressed by the Respondent No.5 to the petitioner herein.

15. The petitioner states that upon receipt of the said intimation of meeting scheduled to be held on 15.09.2006 at 3.00 pm, the petitioner made a request over phone for an adjournment and accordingly the said meeting was deferred for the next meeting. The petitioner states that said fact of adjournment was duly intimated to the petitioner by the Respondent No.5 by its letter dated 27.09.2006.

16. The petitioner states that the petitioner was intimated by the Respondent No.5 by its letter dated 18 Oct, 2006 about the next date of meeting scheduled to be held on 7.11.2006 before the adjudication sub committee at 3.00 .m. The petitioner states that dues to some urgent work, the petitioner was forced and compelled to leave to abroad and the petitioner remain out of country on the date of the said meeting scheduled to be held on 07.11.2006. The petitioner stated that after returning from the abroad the petitioner wrote a letter dated 23.11.2006 in order to make an inquiry about the stage and progress in the matter of claim made by the Respondent no.1 with the Respondent no.5. Hereto annexed and marked Exhibit-K is the copy of letter dated 23.11.2006.

17. The petitioner states that the said letter by itself would show that till that time, the petitioner was not having knowledge about the meeting scheduled to be held on 07.11.2006 and further what progress took place in the meeting. The petitioner states that at least till 23.11.2006 the petitioner was unnoticed in the matter and the progress if any taken place therein. The petitioner states that though there was no notice to the petitioner and though the Respondent No.5 had no authority to take any such decision, to the shock and

surprise of the petitioner, the petitioner have been informed by the office of the Respondent No.5 vide their letter dated 29.11.2006 mentioning therein that they have already taken decision on 07.11.2006 and the award has been passed. In the absence of the petitioner and also in the absence of his defence which could have been put forth. Hereto annexed and marked as Exhibit-I is the copy of the said letter dated 29.11.2006."

7. Respondent no.1 in the affidavit in reply dated 20th June, 2007 has placed on record the letter dated 8th September 2006 issued by IMPDA. The said letter was sent through courier and also by under certificate of posting. The receipt and acknowledgement are also part of the affidavit. Another letter dated 18.10.2006 which was sent to the petitioner is also not in dispute. There is no dispute that the petitioner had received notice dated 18.10.2006 about the meeting scheduled to be held on 7.11.2006, but no one appeared on behalf of the petitioner in the said meeting. The petitioner thereafter by letter dated 23.11.2006 enquired about the matter. Respondent no.5, therefore, vide their letter dated 29.11.2006 intimated to the petitioner the decision of the Tribunal (the Committee) dated 17.11.2006 which has been taken in the meeting held on 7.11.2006 as fixed.

8. The submission of the petitioner that in view of the authority in the case of **Juggilal Kamlapat v. General Fibre Dealers Ltd., A.I.R. 1955 Calcutta 354,** based on the Arbitration Act, 1940, Section 30, any decision passed by the Tribunal without giving notice or their intention to proceed exparte is bad. Such exparte decision, therefore, as contended, is liable to be set aside inspite of notice of a peremptory hearing given in respect of the earlier date. It was, however, subject to condition that prejudice was caused to the party against whom the exparte order was made. The facts and circumstances of the present case are totally distinct and distinguishable. In the present case, admittedly, the petitioner received the notices and intimation of the date of hearing. By notice dated 18.10.2006 it was specifically mentioned by respondent no.2's Secretary that "if you, however, fail to attend the said meting as called for the Committee will hear the other party and decide the matter exparte based on available records". Therefore, on facts itself there was clear notice given to the petitioner about the intention of the Tribunal to proceed exparte if the defaulting party like the petitioner absented himself to defeat the object of the reference. Thus, this judgement, in no way assist or give any support to the petitioner in regard to his submission of principles of natural justice.

9. Respondent no.5 had given full opportunity to the petitioner and after complying with the principle of natural justice they have passed the order based on the material available on record. The fact that the petitioner has entered into the compromise/settlement just cannot be overlooked. Having once agreed and settled the matter by document dated 13.11.2004 and as the petitioner failed and neglected to make the payment of balance instalments, respondent no.5 therefore was right in passing the award against the petitioner as recorded above. The party one who agrees to settle the matter and has neglected to perform his part as settled, the Committee, in my view, therefore, right in awarding the balance payment with interest as agreed and settled between the parties.

10. In view of this, I see no reason to interfere with the award as the mutual settlement dated 13.11.2004 itself is the foundation to pass the award. The Award is, therefore, within the frame work of law as well as agreement between the parties.

11. In the result, the petition is dismissed with no order as to costs.

[ANOOP V. MOHTA,J.]